

1 Technology was involved. Steve Bernatowicz was
2 involved in the thermal design of the unit. There
3 were changes, if I recall, in the fact that the unit
4 was -- included a membrane wall, which I'd talked
5 about previously was part of the license agreement.
6 And so, therefore, the membrane wall in front and
7 rear would have to have been changed, and those
8 drawings would be changed by Erie Power under the
9 guidance of EPTI.

10 Q. You mean changed by Victory under the
11 guidance of EPTI?

12 A. I'm sorry, yes, by Victory under the
13 guidance of EPTI, correct.

14 Q. Did that, in fact, occur, that Victory
15 modified the drawings under the guidance of EPTI?

16 A. I believe so. I don't recall entirely. I
17 believe that was the case.

18 Q. Bob Gdaniec then writes back to you:
19 "Mark, be careful on this one for free. Dan and I
20 spoke on it today, and he believes that if this is
21 outside of the license agreement (which it is), then
22 we better get paid for it. I think you need to get
23 together with Dan and Stephen and Simon and resolve
24 this matter pretty quickly. From what I understand,
25 this is way out of the license agreement, welded

1 walls and higher design pressure.

2 At this point, until Dan gives the okay, we
3 are not going to support this one for free. Bob."

4 Is that correct?

5 A. That's what he wrote, yes.

6 Q. And then you write in response: "Bob,
7 thank you for your e-mail message. The welded wall
8 design will be handled by Victory and they will take
9 the responsibility and the liability of the change."
10 What do you mean by Victory taking responsibility and
11 liability of the change?

12 A. In terms of pulling in the welded wall in
13 the membrane, that Victory would be responsible for
14 changing the drawings, doing the manufacturing and so
15 forth. And if there's liability that was associated
16 with that, they would be -- as in Victory, would be
17 liable for those changes.

18 Q. You then say: "We will not be required to
19 make such changes. In regard to the design pressure,
20 the operating pressure of the boiler outlet is 110
21 psig. I am not sure where you are getting a pressure
22 outside the "M" series. In general, we need to be
23 practical about the agreement. We need to assist
24 Victory in a positive way to ensure sales are
25 generated and a diversified revenue stream is created

1 for EPTI." Did I read that correctly?

2 A. Yes.

3 Q. So you didn't tell Bob Gdaniec you're
4 wrong, welded walls are within the scope of the
5 license agreement. You simply said we need to be
6 practical about the agreement, correct?

7 MR. SHEEAN: Objection,
8 mischaracterizes the document. You can answer.

9 A. No. Bob was wrong. Bob's interpretation
10 of the agreement was wrong. Erie designed and
11 engineered this unit and included welded front and
12 rear walls, as they did on the prior job, which was
13 for Broin Corporation, three units, membrane front
14 and rear, membrane inner, membrane outer. There was
15 no confusion within the corporation.

16 Q. (By Mr. Gisleson) You did not, in
17 responding to Mr. Gdaniec, advise him that he was
18 wrong in describing welded walls as being outside of
19 the license agreement, did you?

20 MR. SHEEAN: Objection,
21 mischaracterizes the document and it's been asked and
22 answered. You can answer it again.

23 A. The welded wall construction was included
24 prior to the license. There are times internally to
25 a corporation that you try to be politically

1 correct. What I was trying to do was be politically
2 correct in getting Bob to understand that this
3 agreement did include this equipment. And if you
4 wanted to argue and fight about it, you could take it
5 to Stephen Kang, you could take it to others in the
6 superiors, which he did.

7 Q. (By Mr. Gisleson) This e-mail exchange
8 occurred before you finalized Annex.1 of the license
9 agreement, correct?

10 A. What was the date of the annex agreement
11 that was executed?

12 Q. February the 3rd.

13 A. Then it would have -- yes, then it would
14 have -- exchange would have occurred then.

15 (Plaintiff's Exhibit Number 24 was marked
16 for identification.)

17 Q. (By Mr. Gisleson) I'd like to show you
18 White Exhibit 24, which is a document stamped
19 IKE273. Do you recognize this as an e-mail exchange
20 in which you participated on February 3, 2003?

21 A. Yes.

22 Q. The lower message from Dave Briggs to you,
23 copied to Dan Levstek and Bob Gdaniec, subject
24 license agreement response reads: "Mark, the
25 agreement is for the saturated standard 8M through

1 22M refractory wall design Keystone package
2 boilers." Did you thereafter write back to Dave
3 Briggs and tell him he's wrong in his interpretation
4 of the license agreement?

5 A. Shawn Brewer had asked what would change in
6 terms of the "M" series Keystone line if -- with a
7 membrane wall, which, again, was part of the license
8 agreement. I was referring back to Shawn: Ask Dave
9 Briggs for some assistance to see -- Dave with these
10 drawings that were provided to Victory Energy, what
11 would change? That information was then transmitted
12 back.

13 Q. Did you write back to Dave Briggs to advise
14 him that he's wrong as his interpretation of the
15 license agreement as being the saturated standard 8M
16 through 22M refractory wall design Keystone package
17 boilers?

18 A. I don't recall, but I wasn't Dave's
19 supervisor.

20 Q. You were being politically correct again?

21 A. I think it was up to David's supervisor to
22 inform him and, also, Bob Gdaniec to be informed by
23 Stephen Kang and Dan Levstek of the intention, so --

24 (Plaintiff's Exhibit Number 25 was marked
25 for identification.)

1 Q. (By Mr. Gisleson) I'd like to show you
2 what's been marked as White Exhibit 25. Do you
3 recognize this as a true and correct copy of an
4 e-mail that you sent to Shawn Brewer on February 10,
5 2003, on the subject of Atofina, utilization of the
6 Heinz boiler?

7 A. Yes.

8 Q. You write: "Shawn, as you are aware, at
9 present, the Atofina boiler is sized as a 14M special
10 (with water cooled walls)." What did you mean by 14M
11 special?

12 A. Well, 14M Keystone that would -- the
13 drawings that were provided to Victory included a
14 different wall configuration. This was my attempt to
15 try to just -- to show they were different, that they
16 show that the water cooled walls included in this as
17 part of the license agreement would make some
18 change. It would be an alteration. There is no 14M
19 special. It's just my interpretation.

20 Q. So what that means is that it's not a
21 standard model?

22 MR. SHEEAN: Objection to the extent
23 it calls for a legal conclusion.

24 A. When you say what's not a standard model?

25 Q. (By Mr. Gisleson) In referring to a 14M

1 another document for which I couldn't find the Bates
2 stamped copy in my files, but we have produced a copy
3 of this to VEO.

4 MR. SHEEAN: Based on those grounds,
5 I'm going to object to the use of this document.

6 Q. (By Mr. Gisleson) Do you see how this is an
7 e-mail exchange in which you're involved from
8 February 19, 2003, on the subject of list of
9 remaining marked up drawings for Victory Energy
10 license agreement?

11 A. Yes.

12 Q. The lower e-mail from Dave Briggs to you
13 provides: "Mark, the following is a list of the
14 remaining marked up drawings that are to support the
15 license agreement with Victory Energy. I have made
16 you two prints each for your distribution."

17 And then Dan Levstek, the director of
18 engineering at EPTI, writes to you and says: "Mark,
19 as these drawings are outside of the basic license
20 agreement, we should put a disclaimer in the
21 transmittal to Victory that they are for use on this
22 specific project only."

23 Did you follow his recommendation?

24 A. I don't recall.

25 Q. Did you write back to him to say, hey, Dan,

1 all these drawings are within the scope of the basic
2 license agreement?

3 A. I don't recall.

4 Q. Was VEO disclosing to you the designs of
5 all of the proposed Keystone boilers that it was
6 seeking to sell?

7 A. He's already asked --

8 MR. GISLESON: Could you read that
9 back.

10 (The record, as requested, was read by the reporter.)

11 MR. SHEEAN: Objection, vague.

12 A. Please repeat the question.

13 MR. GISLESON: Would you read it back.

14 (The record, as requested, was read by the reporter.)

15 MR. SHEEAN: Same objection.

16 Q. (By Mr. Gisleson) This is while you were
17 working with EPTI.

18 A. I understand that. I don't recall.

19 (Plaintiff's Exhibit Number 27 was marked
20 for identification.)

21 Q. (By Mr. Gisleson) I'd like to show you
22 what's been marked -- it's another where I don't have
23 the Bates number handle on it.

24 MR. SHEEAN: Same objection as to
25 use.

1 A. I don't know.

2 Q. At some point, VEO was interested in
3 acquiring the Keystone technology from EPTI, correct?

4 A. Yes.

5 Q. When did those discussions begin?

6 A. I don't -- I don't recall.

7 Q. Approximately?

8 A. I don't recall.

9 Q. When did you first have a conversation with
10 John Viskup about his interest in acquiring the
11 Keystone technology?

12 A. While I worked with Victory Energy? I
13 don't recall. If you can show me a document, that
14 would refresh my memory.

15 Q. Did you have any conversations with John
16 Viskup prior to your joining VEO in which he
17 expressed an interest in acquiring the Keystone
18 technology?

19 A. No.

20 MR. SHEEAN: I'm going to object to
21 this entire line of questions as vague with respect
22 to the term "Keystone technology".

23 Q. (By Mr. Gisleson) Is it your understanding
24 that Victory wanted to acquire ownership over the
25 right to design and manufacture the "M" series

1 Keystone standard package watertube boiler?

2 A. From Erie Power Technology?

3 Q. Correct.

4 A. While I was employed at Victory Energy?

5 Yes, we pursued that with Stephen Kang, Bob Gdaniec,
6 Dan Levstek -- I don't think it was Dan Levstek.

7 Q. Over what period of time did those
8 discussions occur?

9 A. I don't recall.

10 Q. Can you estimate it in terms of weeks?

11 MR. SHEEAN: Objection, calls for
12 speculation.

13 A. No.

14 Q. (By Mr. Gisleson) Were you personally
15 involved in those discussions?

16 A. Yes.

17 Q. So do you have personal knowledge as to how
18 the discussions progressed?

19 A. Yeah.

20 Q. Who else from Victory was involved in those
21 discussions, if anyone?

22 A. John Viskup.

23 Q. Just the two of you?

24 A. I believe so.

25 Q. Who from EPTI was involved in those

1 discussions?

2 A. Bob Gdaniec, Stephen Kang, and they had a
3 consultant -- or an employee at the time. I believe
4 he was a consultant, George -- I don't recall his
5 last name.

6 Q. What was it that Victory wanted to acquire,
7 in your own words?

8 A. We wanted to acquire at the time the
9 Keystone technology, the "O" type series up to
10 basically where the license covered, around the
11 150,000 pound power range or somewhere thereabouts.
12 You know, the discussions were somewhat fluid trying
13 to understand what it was Erie was wanting to sell,
14 what it was we would acquire.

15 Q. Did VEO also want to acquire the Keystone
16 name?

17 A. I believe so.

18 Q. Were drafts of a proposed acquisition
19 agreement exchanged?

20 A. Yes.

21 Q. Was an agreement reached?

22 A. No.

23 Q. What's your understanding as to why an
24 agreement was not reached?

25 A. Well, I think initially we came fairly

1 7.

2 A. Okay.

3 Q. (By Mr. Gisleson) Had VEO offered to pay
4 EPTI \$250,000 to purchase the Keystone technology,
5 including the use of the name Keystone?

6 A. I don't recall.

7 Q. Was there a specific purchase price that
8 had been advanced by VEO?

9 A. No.

10 (Plaintiff's Exhibit Number 30 was marked
11 for identification.)

12 Q. (By Mr. Gisleson) I'd like to show you
13 what's been marked as White Exhibit 29 [sic]. It's a
14 document stamped V120 through V124. Do you recognize
15 this as an e-mail with attachment in which you are
16 responding to the March 26, 2004, letter of EPTI,
17 Mr. Gdaniec, advising of concerns of VEO's license
18 agreement performance?

19 A. Yes.

20 Q. Now, in the first numbered paragraph of
21 Mr. Gdaniec's March 26th letter, he writes that: VEO
22 currently licenses only the "M" series product line,
23 which has a very specific geometry and
24 characteristics.

25 MR. SHEEAN: John, can you hold on

1 till we get to that page?

2 MR. GISLESON: Sure.

3 Q. (By Mr. Gisleson) In review of some of the
4 VEO recent projects and proposals, it appears that
5 the majority of projects that VEO is pursuing or has
6 completed have been outside the definition of the
7 license agreement. Of particular concern most
8 recently are the Oxy and Dallas/Ft. Worth airport
9 projects, which are well outside the bounds of the
10 products defined in the agreement. VEO will need to
11 redirect their attention on the sales/marketing and
12 execution of the products that are defined in the
13 license agreement. Annex.1 of the current agreement
14 provides a clear definition of the "M" series design
15 with product size, dimensional data from different
16 size ranges, typical cross-section of the boiler and
17 overall boiler construction, which includes
18 refractory front and rear walls, tangent furnace and
19 outer wall tubes and pressure casing design. Do you
20 see that?

21 A. Uh-huh.

22 Q. Yes?

23 A. Yes.

24 Q. And as to his description of Annex.1,
25 that's literally correct, right?

1 A. That's your interpretation.

2 Q. As to what's contained within Annex.1, can
3 you identify any inaccuracies in how Mr. Gdaniec
4 described Annex.1?

5 A. Well, in Annex.1, I think it -- as -- what
6 I said before and this morning, the -- it wasn't the
7 intent of the agreement to limit the geometry, as is
8 stated with Annex.1. If you want to refer
9 specifically and only to Annex.1 and not to the
10 technical information, that's your -- that's to your
11 choosing, but I disagree.

12 Q. You write in response: The agreement does
13 provide a specific geometry and characteristics.
14 When you're referring there to the agreement, are you
15 referring to the annex?

16 A. Referring to the annex.

17 Q. The agreement does provide specific
18 geometry and characteristics, but also allows for
19 improvements. Refer to Clause 13. As such, VEO has
20 made improvements which are necessary to
21 offer/provide a Keystone boiler that is technically
22 compliant with our customers' requirements. It is in
23 line with that of our competitor's offerings and as
24 we deem necessary to enhance our overall success. Is
25 that right?

1 A. That's what I wrote.

2 Q. This is the very first time you've ever
3 advised EPTI in writing that the membrane wall and
4 other modifications that VEO was making were
5 improvements under the license agreement, correct?

6 A. Yes. But as I stated this morning, there
7 are no such improvements. In my haste to get this
8 letter out, I failed to look at the technical
9 information, which clearly transferred membrane wall
10 technology. So this is an inaccurate statement that
11 I made.

12 Q. You then write: "The Oxyvinyls project
13 includes two 15M series Keystone boilers, each of
14 which include membrane furnace and outer walls, water
15 cooled front and rear end, an upper drum size from 60
16 ID. These features are outside the geometry and
17 characteristics of the license. They are clearly
18 improvements." Was that an inaccurate statement, as
19 well?

20 A. Outside of the 60-inch drum, yes, they were
21 inaccurate statements by me.

22 Q. Whose idea was it at VEO to describe those
23 changes to the boilers as being improvements?

24 A. I just didn't look at the technical
25 information. I didn't do my homework. I should have

1 looked at all of the information before I responded
2 and, as a result, there was inaccuracies in the
3 letter.

4 Q. Were you the one who decided to try and fit
5 the changes to the Keystones within the improvements
6 definition of the license agreement?

7 MR. SHEEAN: Objection to use of the
8 term "fit". Mischaracterizes prior testimony.

9 A. No, there was no such trying to fit
10 anything, as you referred it to.

11 Q. (By Mr. Gisleson) Did you and John Viskup
12 sit down and decide how to respond to the concerns
13 raised in Paragraph 1?

14 A. No. I think I generally wrote -- I wrote
15 this -- this agreement. And, as I said, I wrote it
16 in haste and I didn't review all of the information,
17 the technical information that was transferred. And,
18 you know, in hindsight, I should have.

19 Q. So it's clear, in your view, the use of
20 membrane furnace and outer walls, as well as a water
21 cooled front and rear, are not improvements under the
22 agreement, correct?

23 A. They're not improvements.

24 Q. Next paragraph says: "The Dallas/Ft. Worth
25 project includes a single 15 "M" series Keystone

1 should not have.

2 Q. In Paragraph 4, you state that: "To date
3 no changes have been made without EPTI's knowledge."
4 Is that an accurate statement?

5 A. Yes, I believe that to be an accurate
6 statement.

7 Q. And you're referring to changes to the
8 design of the standard Keystone package watertube
9 boiler?

10 A. I'm referring to changes outside the
11 boundaries of the agreement.

12 Q. And when you say that -- strike that.

13 When you say that the changes were made
14 with EPTI's knowledge, did you believe that EPTI
15 expressly gave its consent to those changes being
16 made?

17 A. Yes, I do.

18 Q. Turning to the next page under 4-B,
19 Mr. Gdaniec wrote: "VEO is entitled to use the marks
20 in both literature and on the product. However, it
21 is important that reference be made in all instances
22 to the relationship to EPTI. In reviewing the
23 documents/correspondence to date, it was noted that
24 we have not seen the sales brochure and/or literature
25 that is being proposed by VEO to market the products

1 and would request you submit a copy to EPTI for our
2 review. We realize that some literature is already
3 in use, so, for the most part, this material would be
4 maintained for record. For future sales/marketing
5 literature we request that VEO submit to EPTI in
6 sufficient time in advance of printing to permit our
7 review. In addition to that, we request that VEO
8 submit either the drawing or photograph of the
9 nameplate that is being applied to the boilers."

10 And your response was: "The brochure and
11 sales information of VEO is the sole property of VEO
12 and disclosure is not required by the agreement"; is
13 that correct?

14 A. That's the way I answered it, yes.

15 Q. So you were refusing to provide any of the
16 sales and marketing materials to EPTI, your licensor,
17 right?

18 A. At that point.

19 Q. Did you thereafter provide sales and
20 marketing literature to EPTI for it to see?

21 A. No. It was never requested after that
22 point.

23 Q. You also say: "Photographs of the mark
24 will be provided for the various boilers provided."
25 Did you ever provide EPTI with those photographs?

1 A. May I read the document, please?

2 I'm sorry, go ahead.

3 Q. Did you receive and review a copy of this
4 August 31, 2004, letter?

5 A. I believe so.

6 Q. And you read the statements in the third
7 and fourth paragraphs that: "VEO has violated the
8 terms of the license agreement on several occasions,
9 and EPTI has been attempting to work with VEO to
10 ensure that such violations do not continue.

11 EPTI and its successors and assigns will
12 continue to comply with the terms of the license
13 agreement, but we also expect VEO to conform its
14 conduct immediately to the terms of that agreement."

15 You're aware of that expectation by EPTI,
16 correct?

17 A. As it's stated in this letter.

18 Q. Yes.

19 A. Yes.

20 MR. SHEEAN: Objection, asked and
21 answered.

22 (Plaintiff's Exhibit Number 33 was marked
23 for identification.)

24 Q. (By Mr. Gisleson) I'd like to show you
25 what's been marked as White Exhibit 33, which is a

1 document stamped VEO1161 to 62. Did you receive a
2 copy of Exhibit 33 in or about September 2004?

3 A. This letter?

4 Q. Yes.

5 A. I don't recall seeing this.

6 (Plaintiff's Exhibit Number 34 was marked
7 for identification.)

8 Q. (By Mr. Gisleson) I'd like to show you
9 what's been marked as White Exhibit 34. It's a
10 document stamped VEO585. Please take a look at
11 that. Let me know when you're finished, please.

12 Do you recognize this as copy of a
13 September 10, 2004, letter that Chris Petcos, general
14 manager of Indeck Keystone Energy, sent to you?

15 A. Yes.

16 Q. Did you review the letter in or about
17 September 10, 2004?

18 A. In or about that time.

19 Q. So that you understood what IKE's position
20 was with respect to VEO's compliance with the license
21 agreement?

22 A. In a general sense but not fully.

23 (Plaintiff's Exhibit Number 35 was marked
24 for identification.)

25 Q. (By Mr. Gisleson) I'd like to show you

1 what's been marked as White Exhibit 35, which is a
2 document stamped IKE1098. If you'd review the
3 document. Let me know when you're finished.

4 A. Okay.

5 Q. Do you recognize this to be a September 24,
6 2004, e-mail exchange between you and Chris Petcos of
7 Indeck Keystone Energy?

8 A. Yes.

9 Q. Mr. Petcos wrote to you on September 24,
10 2004, in the second paragraph: "In regard to my
11 previous letter, we are still awaiting a response and
12 confirmation that Victory Energy will comply with all
13 the terms and conditions of the license agreement by
14 marketing the specific "M" series product line.
15 Specifically, following the product size, dimensional
16 data for the different size ranges, typical
17 cross-section of the boiler and overall boiler
18 construction, which includes refractory front and
19 rear walls, tangent furnace and outer wall tubes and
20 pressure casing design." Did I read that correctly?

21 A. Yeah, you read --

22 Q. Did that provide the detail that you were
23 looking for in terms of how IKE expected VEO to
24 comply with the license agreement?

25 A. Well, --

1 MR. SHEEAN: I'm going to object as
2 vague. You can answer.

3 A. There's two issues. One, at this time, I
4 don't believe we had sufficient information on the
5 assignment. Two, although Mr. Petcos wrote this, it
6 doesn't reflect our understanding of the agreement.

7 Q. (By Mr. Gisleson) This conveyed clearly to
8 VEO what IKE's expectations as licensor were for the
9 license agreement, correct?

10 MR. SHEEAN: Objection, calls for
11 speculation, lack of foundation.

12 A. I won't speculate then.

13 Q. (By Mr. Gisleson) Did you understand from
14 reading this how IKE expected VEO to perform under
15 the license agreement?

16 A. Not fully.

17 Q. Did you follow up with Mr. Petcos to
18 request clarification as to what he meant by his
19 statements in that paragraph?

20 A. As I said, I didn't have the assignment
21 letter, so I probably did not respond until that came
22 in. And it may have just got overlooked by me.

23 Q. Did you receive the assignment information
24 that you requested or needed from Mr. Petcos?

25 A. I believe we eventually received that.

1 Q. And it was satisfactory to you?

2 A. I believe so.

3 Q. Do you know whether you ever sent a
4 response to Mr. Petcos?

5 A. No, I didn't -- I didn't send a response.

6 Q. Did you ever refuse to comply in writing to
7 Mr. Petcos advising him that you would not follow his
8 understanding of the license agreement?

9 A. I didn't refuse, but I didn't agree on it
10 in writing.

11 Q. During the -- strike that.

12 You're aware that EPTI was in bankruptcy,
13 correct?

14 A. At that time, I was.

15 Q. Did you, on behalf of VEO, ever cause an
16 objection to be filed in the EPTI bankruptcy to IKE
17 acquiring the license agreement?

18 A. I -- I don't have any knowledge of that.

19 Q. How did Chris Sheean come to represent VEO?

20 MR. SHEEAN: I'm going to object to
21 the extent this calls for the disclosure of any
22 attorney-client communication you may have had. If
23 you can answer the question without disclosing any
24 attorney-client information, then go ahead and
25 answer.

1 A. While I was still at EPTI?

2 Q. Yes.

3 A. I don't recall. We may have.

4 Q. Keystone boilers above 150,000 pounds per
5 hour were still products available for sale through
6 EPTI, correct?

7 A. That's correct.

8 Q. And then following that is a January 10,
9 2003, letter that you appeared to have written. Did
10 you, in fact, write that letter?

11 A. Bear with me, please.

12 Q. Sure.

13 A. Yes, I did.

14 Q. And is that letter true and correct, to the
15 best of your knowledge, as to the time it was
16 written?

17 A. Best of my knowledge.

18 (Plaintiff's Exhibit Number 37 was marked
19 for identification.)

20 Q. (By Mr. Gisleson) I'd like to show you
21 what's been marked as White Exhibit 37. It's a
22 document stamped VE0774 to 775. If you'll review
23 that. Let me know whether you've seen it before.

24 A. Yeah, it looks familiar.

25 Q. Is this an e-mail that you sent to Shawn

1 A. Correct.

2 MR. GISLESON: Let's take a break.

3 (Break was taken)

4 Q. (By Mr. Gisleson) In connection with
5 preparing a license agreement, what was your
6 understanding as how the transfer of technical
7 information back from VEO to EPTI was to occur at
8 conclusion of the license.

9 A. At the conclusion of the license
10 agreement? I guess in a general sense, and I have to
11 be honest, I -- without reading -- rereading the
12 agreement, I would have to get an exact definition of
13 what the requirements are. I would have to review
14 the agreement. But in a general sense, all of the
15 information that was transferred at the initial stage
16 and throughout the agreement from EPTI or, in this
17 case, IKE would have to be returned, any proprietary
18 information, the mark and so on and so forth. And
19 then at the time frame, there would be no -- VEO
20 could not continue to use the mark, couldn't use the
21 sales literature and so on and so forth. So at that
22 point, it basically would be terminated.

23 Q. VEO also couldn't use any of the technical
24 information to design or manufacture "O" type
25 boilers?

1 A. Well, there is no patent to an "O" type
2 boiler. The "O" type boiler has been on the market
3 for some time. So I think in terms of using the
4 information that was specifically provided as part of
5 the license agreement, the answer would be no. But
6 if they would -- if Victory and -- would pursue the
7 design and manufacturer of an "O" type boiler, there
8 would be nothing to prohibit that.

9 Q. Could VEO utilize the technical information
10 received from EPTI for the design and manufacture of
11 Keystone boilers in designing "O" type boilers?

12 MR. SHEEAN: Well, I'm going to object
13 to the extent it calls for a legal conclusion, but
14 you can answer.

15 A. Could one use it and adapt it? It's an "O"
16 type boiler, so the answer would be yes.

17 Q. (By Mr. Gisleson) No, but the question,
18 though, is whether, as you understood the license
19 agreement, VEO would be permitted to utilize any of
20 the technical information it received from EPTI with
21 respect to Keystone boilers to design and manufacture
22 "O" type boilers after the license agreement ends?

23 A. No, not using the technical information.

24 Q. You aware of efforts by VEO to obtain
25 rights to use the name Erie City Ironworks?

1 by Mr. Petcos to Mr. Milligan?

2 A. He may have, but I don't recall the
3 details.

4 (Plaintiff's Exhibit Number 40 was marked
5 for identification.)

6 Q. (By Mr. Gisleson) I'd like to show you
7 what's been marked as White Exhibit 39 [sic], which
8 is a document stamped ND276 --

9 MR. SHEEAN: Forty.

10 MR. GISLESON: Forty.

11 Q. (By Mr. Gisleson) I'd like to show you
12 what's been marked as White Exhibit 40, which is a
13 document stamped ND276 through 299. Have you seen
14 this document before?

15 A. Yes.

16 Q. Do you have an understanding as to when it
17 was prepared?

18 A. Not -- not exactly.

19 Q. This is a Keystone Steam Generating Systems
20 sales brochure; is that right?

21 A. Yes.

22 Q. Do you know approximately when it was
23 created?

24 A. I don't recall, to be honest.

25 Q. Do you know whether it was created before

1 or after you joined VEO?

2 A. It was before I joined VEO.

3 Q. Did you provide a Keystone sales brochure
4 to Shawn Brewer or someone else at VEO?

5 A. I believe I provided a brochure to Shawn.

6 Q. Did Shawn Brewer show you a draft of the
7 Victory brochure for the Keystone "M" series before
8 it was finalized?

9 A. This particular brochure?

10 Q. Yes.

11 A. Yes, I've seen it.

12 Q. But did he show you a draft of it before it
13 was finalized?

14 A. No, I saw a final version.

15 Q. It had already gone to printing?

16 A. It appeared it had, yes.

17 Q. Did you send anything in writing to Shawn
18 Brewer advising him that he could copy wholesale the
19 sales manual for Keystone that Erie or one of its
20 predecessors had prepared?

21 MR. SHEEAN: Object to the terms "copy
22 wholesale". You can answer.

23 A. Would you repeat the question.

24 Q. (By Mr. Gisleson) Sure. Did you give
25 written authorization to Shawn Brewer to copy, in

1 material respect, a Keystone sales brochure that was
2 created by EPTI or one of its predecessors?

3 A. I did not give him written authorization,
4 no.

5 Q. Is it correct that a number of the boilers
6 depicted in photographs in this brochure are outside
7 of the scope of the license agreement?

8 A. Without really knowing the specific steam
9 capacity, pressure and temperature range, I couldn't
10 be certain, to be honest. I think it's the intent of
11 this document to show pictures, not to relate to
12 steam capacities, per se, as it relates to the
13 pictures.

14 Q. Is this brochure still in use at VEO?

15 A. I don't believe so.

16 Q. Has it been replaced by another brochure?

17 A. I don't think so.

18 Q. Are there any brochures that are being
19 distributed by VEO?

20 A. I think at this time, no. I don't think
21 we're actually utilizing really any brochures that
22 would depict the Keystone.

23 Q. When did VEO stop issuing brochures for the
24 Keystone?

25 A. I don't recall.